

United States District Court  
Eastern District of California

12 Benjamin Ellis,

13 Plaintiff,

Civ. No. S 03-2622 DFL PAN P

14 vs.

Order on Request for Counsel

15 S. Wheeler, et al.,

16 Defendants.

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18 Plaintiff is a state prisoner proceeding pro se and in forma  
19 pauperis claiming violaion of his federal civil rights.

20 Plaintiff moved for appointment of counsel on November 21, 2005.

21 In proceedings that do not threaten a litigant with loss of  
22 physical liberty, there presumptively is no right to appointed  
23 counsel. Lassiter v. Department of Social Services, 452 U.S. 18,  
24 26-27 (1981). Section 1915(e)(1) of Title 28 confers discretion  
25 upon the court to request counsel represent an indigent civil  
26 litigant. Mallard v. District Court, 490 U.S. 296 (1989).

1        In deciding whether to appoint counsel the court exercises  
2 discretion governed by a number of factors, including the  
3 likelihood of success on the merits and the applicant's ability  
4 to present his claims in light of their complexity. Weygandt v.  
5 Look, 718 F.2d 952, 954 (9th Cir. 1983); see also, LaMere v.  
6 Risley, 827 F.2d 622, 626 (9th Cir. 1987). Ordinarily the  
7 presumption of regularity in the state's procedures for confining  
8 prisoners suggests a lack of likely success and counsels against  
9 appointment of counsel. See Maclin v. Freake, 650 F.2d 885, 887  
10 (7th Cir. 1981). As a general rule, the court will not appoint  
11 counsel unless the applicant shows his claim has merit in fact  
12 and law. Id. Even if the applicant overcomes this hurdle, the  
13 court will not appoint counsel if the law is settled and the  
14 material facts are within the plaintiff's possession, viz., they  
15 do not require investigation outside the prison walls. Id. at  
16 887-88.

17        Here, plaintiff alleges his constitutional rights were  
18 violated when defendants forced plaintiff, who is paralyzed from  
19 the chest down, to disrobe for a strip-search while sitting in a  
20 chair. The law governing this issue is settled and investigation  
21 outside the prison walls is unnecessary to discover material  
22 facts. There is, on the record before the court, no reason to  
23 believe appointment of counsel would be of significant benefit.

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1 Plaintiff's November 21, 2005, request for the appointment  
2 of counsel therefore is denied.

3 So ordered.

4 Dated: December 13, 2005.

5 /s/ Peter A. Nowinski

6 PETER A. NOWINSKI

7 Magistrate Judge

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